

Introduction to Form Es

Dr Charlotte Proudman & Shárin Diegan

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Introduction

- ▶ Form E is the financial statement used to provide disclosure in proceedings for financial orders on divorce (or for financial relief after an overseas divorce) under Family Procedure Rule (FPR) 9. Form E1 is the statement for use in proceedings for a financial remedy other than a financial order, and Form E2 is the statement for use in proceedings to vary a financial remedy.
- ▶ The parties must set out their financial circumstances in Form E, with supporting documents, and it must be verified by a statement of truth.
- ▶ Under Chapter 4 standard procedure, Form E is filed and served at least 35 days before the First Appointment (FPR 9.14(1)).
- ▶ Under Chapter 5 fast-track procedure, Form E is filed and served within 21 days after the application for financial orders has been issued (FPR 9.19(1)).

Answering the important questions

- ▶ **Date of the separation: 1.5**
 - ▶ The date on which the parties ceased living together as husband and wife or civil partners. It is possible to be separated while continuing to live in the same home provided the parties are leading completely separate lives.
 - ▶ Living apart would mean that the parties no longer sleep together, cook or eat together, watch television together or carry out domestic chores such as cleaning, washing and ironing for one another.
- ▶ **Petition for divorce, dissolution, nullity or (judicial) separation: 1.6**
 - ▶ The date on which the petition was issued by the court.
- ▶ **Do you intend to live with a new partner within the next six months?: 1.9**
 - ▶ A new partner's income, assets and liabilities need to be detailed at section 4.6 as their financial position can have a bearing on the financial order made.

Continued

- ▶ **Details of any children of the family: 1.10**
 - ▶ This is any child, other than a foster child, treated by the parties as a child of the family whether the biological child of both parents or not.
- ▶ **Details of the state of health of yourself if you think this should be taken into account: 1.11**
 - ▶ Only information about physical or mental disability or long-term sickness should be included. The court does not need to know about minor ailments.
- ▶ **Details of the state of health of the children if you think this should be taken into account: 1.11**
 - ▶ Only information about physical or mental disability or long term sickness should be included. The court does not need to know about minor ailments.
- ▶ **Details of the present educational arrangements for the children: 1.12**
 - ▶ For each child the name of the school, the school's address and whether fees are charged.
- ▶ **Details of the future educational arrangements for the children: 1.12**
 - ▶ If known, for each child the name of the school, the school's address and whether fees are charged.

2.1 Property

- ▶ **You should specify here whether the property is owned in the sole name of one of the parties or in joint names by way of a joint tenancy or as tenants in common. If the property is owned as tenants in common, you should specify the shares in which the property is held.**
- ▶ **If you consider that legal ownership as recorded at the Land Registry does not reflect the true position, state why**
 - ▶ You should order an up-to-date copy of the title register in order to check the legal ownership recorded.
- ▶ **Current market value of the property**
 - ▶ It is good practice to seek up to three market appraisals from reputable estate agents, then to take an average value for the **Form E**. The parties should attempt to agree on the estate agents to be asked to undertake the market appraisals. It is important that the appraisals set out market value and not just asking prices.
- ▶ **Balance(s) outstanding on any mortgage(s)**
 - ▶ For the purposes of **Form E**, it may be sufficient to use the figures from the last annual mortgage statement. If more than three months have elapsed, write to the mortgage company or companies seeking an up-to-date redemption figure for each mortgage, together with details of any penalties payable on any sale.
- ▶ **If a sale at this stage would result in penalties payable under the mortgage, state amount**
 - ▶ If your client does not know the position regarding penalties payable on any sale of the property, write to the mortgage company or companies seeking the information.
- ▶ **Estimate the costs of sale of the property**
 - ▶ Costs of sale are any estate agents' commission plus VAT, legal fees plus VAT and disbursements such as search fees and banking charges. Many solicitors estimate costs of sale of the property at 3% of the market value.

Section 2: Financial details: 2.11

business interests

- ▶ **Contacting your client's accountant**
 - ▶ You may need to contact your client's accountant for the information and documents requested.
- ▶ **Contacting Companies House**
 - ▶ You can contact Companies House online to obtain company accounts and for basic details about limited companies.
 - ▶ If you do not already have a Companies House account, you can register at [Companies House](#).
- ▶ **Check company accounts**
 - ▶ Check that your client's company accounts are final, signed and dated and that they are full audited accounts and not abbreviated.
- ▶ **If accounts are not an accurate reflection of the current position state why**
 - ▶ Consider appending management accounts from the date of the last accounts if doing so explains why the last set of accounts do not accurately reflect the current position.
- ▶ If property or other assets have not been re-valued in recent years or are shown at book value, the business may need to be valued.

Section 2: Financial details: 2.3 bank accounts

- ▶ **Details of all personal bank, building society and National Savings Account held in the last twelve months, in which you have an interest**
- ▶ You should ask your client for copy bank statements for all accounts that they have an interest in for the last 12 months. This should include overdrawn accounts. You will be able to obtain most of the information required for the **Form E** from the statements, including the account number, name of other account holder(s) and current balance. Your client will have to explain how any joint account balances are shared between them and the other account holder(s) so that you can adjust the value of their interest.

Section 2: Financial details: 2.6 monies owed

- ▶ Examples of monies owed might include:
- ▶ Money owed as a consequence of a loan made by your client to a member of their family, a friend or other acquaintance.
- ▶ Money owed to your client under a court order.
- ▶ Unpaid maintenance owed to your client.
- ▶ Unpaid inheritance owed to your client under a will.
- ▶ Unpaid rental income.
- ▶ Money owing under a trust yet to be paid out.
- ▶ A windfall payment to be made, for example, a lottery win.

Section 3: Financial Requirements

Income & capital needs

- ▶ Income and capital needs for yourself and for any children living with you or provided for by you.
- ▶ The figures should be either annual, monthly or weekly.
- ▶ The figures should be an accurate reflection of need and not a generous estimate
 - ▶ The figures for current costs should not outstrip what is available
- ▶ Estimated future cost should be a realistic future cost

Section 4: Bad Behaviour 4.4

- ▶ “Bad behaviour or conduct by the other party will only be taken into account in very exceptional circumstances...”
- ▶ Conduct within the meaning of s.25 MCA 1973, namely “conduct is such that it would in the opinion of the court be inequitable to disregard.
- ▶ Conduct of the other party such that it has negatively affected the other party’s earning capacity.
 - ▶ The injury can manifest as a physical injury and/or as psychological harm.
 - ▶ Gasp factor rather than a mere gulp.
 - ▶ Adultery is unlikely to be sufficiently exceptional to be taken into account.

Contact Details

- ▶ Any Questions?
- ▶ THANK YOU

Name - Goldsmith Chambers

E-mail – c.proudman@goldsmithchambers.com

Clerks: [Scarlett Walkins, s.Walkins@goldsmithchambers.com](mailto:Scarlett.Walkins@goldsmithchambers.com)

Tel: 020 7353 6802

